

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed**

**Rule making related to certificates of nonviable birth**

The Public Health Department hereby amends Chapter 95, “Vital Records: General Administration,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 144.3 and section 144.31B as enacted by 2022 Iowa Acts, Senate File 577.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 144.31B as enacted by 2022 Iowa Acts, Senate File 577.

*Purpose and Summary*

These amendments implement 2022 Iowa Acts, Senate File 577, by establishing a process to request and issue a certificate of nonviable birth when a health care provider diagnoses a nonviable birth.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 16, 2022, as **ARC 6648C**. No public comments were received. One change from the Notice has been made. Since publication of the Notice, 2022 Iowa Acts, Senate File 577, has been codified. One reference in the rule making to Senate File 577 has been removed accordingly.

*Adoption of Rule Making*

This rule making was adopted by the State Board of Health on January 11, 2023.

*Fiscal Impact*

This rule making has a fiscal impact to the State of Iowa. A fiscal impact of less than \$100,000 annually or \$500,000 over five years is anticipated. The Department anticipates hiring one clerk specialist, and a fee for issuance of a certificate of nonviable birth will be established.

*Jobs Impact*

The Department anticipates hiring one clerk specialist for the issuance of certificates of nonviable birth.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department’s waiver provisions contained in 641—Chapter 178.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on March 15, 2023.

The following rule-making actions are adopted:

ITEM 1. Adopt the following new paragraph **95.6(1)“h”**:

*h.* The state registrar shall charge a fee of \$15 for the purpose of issuing a certificate of nonviable birth pursuant to Iowa Code section 144.31B.

ITEM 2. Renumber rules **641—95.15(144)** to **641—95.17(144)** as **641—95.16(144)** to **641—95.18(144)**.

ITEM 3. Adopt the following new rule 641—95.15(144):

**641—95.15(144) Certificate of nonviable birth.**

**95.15(1)** As used in this rule:

*“Certificate of nonviable birth”* means a document issued based upon a nonviable birth.

*“Health care provider”* means the same as defined in Iowa Code section 144.29A.

*“Hospital”* means the same as defined in Iowa Code section 135B.1.

*“Nonviable birth”* means an unintentional, spontaneous fetal demise occurring after demonstration of a doppler-detected heartbeat and prior to the twentieth week of gestation during a pregnancy that has been verified by a health care provider.

**95.15(2)** A health care provider who attends or diagnoses a nonviable birth or a hospital at which a nonviable birth occurs shall advise a patient who experiences a nonviable birth that the patient may request a certificate of nonviable birth as provided in this section and, upon request by the patient, shall provide a letter certifying the nonviable birth to the patient on the form prescribed by the state registrar.

**95.15(3)** The department shall issue a certificate of nonviable birth to a patient within 60 days of receipt of a request and certification letter. The request shall be made on the form prescribed by the state registrar.

**95.15(4)** The certificate of nonviable birth shall contain all of the following:

*a.* The date of the nonviable birth.

*b.* The name and gender of the baby, if known.

(1) If the name is not furnished by the patient, the department shall complete the certificate with the name “baby boy” or “baby girl” and the last name of the patient.

(2) If the gender is unknown, the department shall complete the certificate with the name “baby” and the last name of the patient.

*c.* The name of the patient and, if married, the patient’s spouse.

*d.* The statement: “This certificate is not proof of live birth.”

**95.15(5)** The fees collected shall be remitted to the treasurer of state for deposit in the general fund of the state and the vital records fund in accordance with Iowa Code section 144.46A.

**95.15(6)** A certificate of nonviable birth shall not be filed or registered with the department. The department shall not register the nonviable birth associated with a certificate issued under this section or use the nonviable birth in calculating live birth statistics.

**95.15(7)** A certificate of nonviable birth shall not be used to establish, bring, or support a civil cause of action seeking damages against any person for bodily injury, personal injury, or wrongful death for a nonviable birth.

**95.15(8)** This section shall only apply to, and a certificate of nonviable birth may be requested and issued for, nonviable births occurring on or after January 1, 2000.

This rule is intended to implement Iowa Code section 144.31B.

[Filed 1/12/23, effective 3/15/23]

[Published 2/8/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/8/23.